



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 15, 1993

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 93-47

Re: Procedures for the sale of county real property acquired by Harris County for road purposes but no longer needed for road purposes (RQ-280)

Dear Mr. Driscoll:

You inquire about the procedures for Harris County's sale of a parcel of land originally acquired in fee for a road project. You say that the road project was abandoned and the tract in question was never used for roadway purposes. The county wishes to sell the land as surplus property and has notified the adjacent owners of their priority right to purchase it under the Harris County Road Law, a special law first adopted in 1913. Acts 1913, 33d Leg., ch. 17; at 64; *see* Tex. Const., art. VIII, § 9 (authorizing legislature to adopt local laws for the construction and maintenance of roads and highways). Section 31-E of that law, adopted in 1967, provides as follows:

When the Commissioners Court shall determine that any real property or interest therein, heretofore or hereafter acquired by Harris County for road purposes, is no longer needed for road purposes, the Commissioners Court shall have the power to sell such real property It shall be the duty of the Commissioners Court to determine the reasonable market value of any such real property to be sold Provided, however, when the Commissioners Court determines that such real property should be sold, it shall be sold with the following priorities:

- (1) To abutting or adjoining landowners;
- (2) to the original grantors . . . ; or
- (3) to the general public at public auction, notice of which sale shall be advertised at least twenty (20) days before the day of sale

Acts 1967, 60th Leg., ch. 244, at 557.

You state that the owners of two other tracts which touch the subject tract have responded to the county's notice and have deposited with the county \$1,000 each to cover administrative and appraisal costs incident to the sale. In addition, a party not listed in priority categories (1) or (2) of section 31-E has expressed interest in purchasing the tract of land. In connection with these facts, you ask four questions. Your first and second questions are as follows:

1. Can Harris County sell a strip of land acquired for road purposes (after the road project is abandoned) to an abutting or adjoining landowner without an auction or receiving of bids?
2. Can Harris County sell a strip of land acquired for road purposes (after the road project is abandoned) to an abutting or adjoining landowner without publication of notice?

The Harris County Road Law makes no express provision as to the manner of sale, except for directing the commissioners court to "determine the reasonable market value" of the property. You point out some general laws that establish procedures for sales of this type. In reviewing these general laws, we keep in mind section 33 of the Harris County Road Law, which provides as follows:

The provisions of this Act are, and shall be, held and construed to be cumulative of all General Laws of this State, on the subject treated of in this Act, when not in conflict therewith, but in case of such conflict this Act shall control as to Harris County.

Acts 1913, 33d Leg., ch. 17, at 64; *see also City of Piney Point Village v. Harris County*, 479 S.W.2d 358 (Tex. Civ. App.--Houston [1st Dist.] 1972, writ ref'd n.r.e.), *appeal dismissed*, 93 Sup. Ct. 1503 (1973).

Section 263.001 of the Local Government Code provides in part:

(a) The commissioners court of a county, by an order entered in its minutes, may appoint a commissioner to sell or lease real property owned by the county. *The sale or lease must be made at a public auction held in accordance with this section unless this chapter provides otherwise.*

(b) The appointed commissioner must publish notice of the auction before the 20th day before the date the auction is held . . . [procedures for publication of notice]. [Emphasis added.]

Section 263.002, a provision of chapter 263 that "provides otherwise," states as follows:

(a) If abandoned seawall or *highway* right-of-way property is no longer needed for such a purpose, the county may *sell or lease the property only according to the following priorities*:

(1) to an abutting or adjoining landowner;

....

(b) Before the commissioners court of the county sells or leases the property to an abutting or adjoining landowner . . . , the commissioners court, *in addition to notice published in accordance with Section 263.001*, shall appoint an appraiser to determine the fair market value . . . of the property [Emphasis added.]

In our opinion, neither section 263.001 nor section 263.002 applies to this sale. Section 263.002 sets out exceptions to the requirements of section 263.001. These exceptions are relevant only if section 263.001 initially applies to a sale. Under section 31-E of the Harris County Road Law, only sales to the general public must be by public auction after notice. These requirements do not apply to the sale of land to abutting or adjoining landowners or to the original grantors. A sale to the general public by auction is inconsistent with the priorities given to the two groups of landowners identified in section 31-E(1) and 31-E(2). Section 31-E(3) requires the county to advertise notice of the public auction; thus public notice is required only when the property is sold by public auction. Notice to the general public is not essential to a sale under section 31-E(1), because the county is able to identify abutting and adjoining landowners from public records.

This office moreover construed former article 1577, V.T.C.S. (1925), now codified as sections 263.001 through 263.006 of the Local Government Code, as excepting sales of unneeded right-of-way property to abutting or adjoining landowners from the provisions requiring public notice and a public auction. See Attorney General Opinions M-339 (1969); WW-850 (1960). In 1973, article 1577 was amended to require public notice and an appraisal, but not an auction, for sales of right-of-way property "no longer needed for seawall or highway purposes" to abutting or adjoining landowners. Acts 1973, 63d Leg., ch. 499, at 1329.

Since section 263.001 conflicts with section 31-E of the Harris County Road Law, section 31-E prevails in Harris County. Acts 1913, 33d Leg., ch. 17, at 64. Neither section 263.001 nor section 263.002 applies to the sale of this parcel of land, and you may sell the land to abutting or adjoining landowners without public notice or a public auction.

Section 31-E does not require the commissioners court to solicit bids to sell the land. Section 272.001 of the Local Government Code, a general law applicable to sale of land owned by a political subdivision, provides for notice to the general public before land "owned by a political subdivision of the state may be sold or exchanged for other land." The notice must include "the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted."

Soon after the original version of section 272.001 was adopted, *see* Acts 1969, 61st Leg., ch. 455, the attorney general issued an opinion concluding that it did not apply to counties. Attorney General Opinion M-524 (1969). The opinion decided that former article 1577, V.T.C.S. (1925), controlled the sale of county-owned land, while the predecessor of section 272.001 applied to other political subdivisions. *Id.* at 3. Article 1577 was later amended to allow the commissioners court to lease real estate through a sealed bid procedure, Acts 1987, 70th Leg., ch. 138, and the amending language was recodified as section 263.007 of the Local Government Code, Acts 1989, 71st Leg., ch. 1, § 60. After its recodification, section 263.007 was amended to authorize the county to sell real property by a competitive bid procedure. Acts 1990, 71st Leg., 6th C.S., ch. 13.

Section 263.007 of the Local Government Code states in part:

(a) The commissioners court of a county may adopt a procedure by which the county may sell or lease through a sealed-bid or sealed-proposal procedure any real property, including space in a building, owned by the county.

(b) The procedure must include a requirement that the county publish . . . a notice of its intent to sell or lease, as appropriate, the real property.

Local Gov't Code § 263.007. The notice must be published in a newspaper of general circulation in the county represented by the commissioners court and in the county where the land is located, if it is located in another county. *Id.* § 263.007(b)(1).

Section 263.007 thus permits counties to sell real property by sealed bid rather than by the auction procedure set out in section 272.001. Section 311.026 of the Government Code, which provides the following rule for harmonizing general and special laws, assists us in reconciling section 263.007 of the Local Government Code with section 31-E of the Harris County Road Law:

(a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Gov't Code § 311.026.

Section 31-E is a provision of a special and local law that applies only in Harris County. Section 31-E(1) is, moreover, very specific: it deals with the sale of a narrow

category of property, allowing it to be sold without notice to the general public and without competitive bidding. Section 263.007 of the Local Government Code is a general law authorizing counties to adopt a sealed bid procedure for the lease or sale of real property. It applies to real property generally and to the lease as well as the sale of property. More important, the sales contemplated by section 263.007 are to the general public. This provision is inconsistent with the requirements applicable to sales governed by the priorities set out in subsections (1) and (2) of section 31-E. Although section 263.007 was adopted later than section 31-E of the Harris County Road Law, there is no indication that it was intended to prevail over section 31-E with respect to selling unneeded county road rights-of-way to abutting or adjoining landowners. In adopting section 263.007 of the Local Government Code, the legislature added a sealed bid procedure for county land sales that formerly could be made only by the auction procedure set out in section 263.001 of the Local Government Code. We have concluded that the provisions of section 263.001 do not apply to sale of real property to "abutting or adjoining landowners" pursuant to section 31-E(1); nor do the provisions of section 263.007, which were adopted to give counties in general a method for selling real property in addition to the method stated in section 263.001. We conclude that section 263.007 of the Local Government Code is inconsistent with and does not apply to sales described by section 31-E(1) of the Harris County Road Law.

Your next question is as follows:

Who is an abutting or adjoining landowner to such strip of land?

We think it is clear that the two owners whose tracts touch the subject tract are "abutting or adjoining landowners" within the meaning of section 31-E(1) of the Harris County Road Law. See *Broun v. Texas & N.O.R. Co.*, 295 S.W. 670 (Tex. Civ. App.—Beaumont 1927, writ ref'd) ("adjoining" carries with it the idea of actual contact or touch"). The term "abutting owner," when used in relation to highways, ordinarily refers to one whose land actually adjoins the way although it is sometimes used loosely without implying more than a close proximity." *State v. Fuller*, 407 S.W.2d 215 (Tex. 1966). Although the court in *State v. Fuller* acknowledged that "abutting owner" was sometimes defined broadly, it applied the ordinary meaning of this term, and decided that the owners of land separated from a highway by a small strip of state-owned land did not own land "abutting on the highway." See also *City of Wichita Falls v. Thomas*, 523 S.W.2d 312, 314 (Tex. Civ. App.—Fort Worth 1975, writ ref'd n.r.e.) (property separated from street by triangular strip of land belonging to city was not "abutting property" subject to street improvement assessment); *Clements v. City of Corpus Christi*, 471 S.W.2d 83, 86 (Tex. Civ. App.—Corpus Christi 1971, writ ref'd n.r.e.) (where property was adjacent to and touched road, property was "abutting" road for purpose of paving assessment statute). In construing section 31-E of the Harris County Road Law, we see no reason to depart from the ordinary meaning of "abutting . . . landowners." The "abutting or adjoining landowners," to whom section 31-E(1) gives priority in purchasing land no longer needed for road purposes, are landowners whose land touches the county tract in question.

4. If two or more abutting or adjoining landowners desire to purchase the strip of land, what procedure may the County use to sell the strip of land?

We have found no provision that answers this question. The commissioners court may exercise only those powers conferred upon it by the constitution and statutes, but it has broad discretion in choosing how to exercise its express powers. *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948); *Anderson v. Wood*, 152 S.W.2d 1084 (Tex. 1941). We believe that the county has discretion to adopt a reasonable procedure to address this situation. Thus, it may choose to require bids or hold an auction for the persons who own land adjoining or abutting the county tract. See *Patten v. Concho County*, 196 S.W.2d 833 (Tex. Civ. App.--Austin 1946, no writ) (although not required to make particular purchase through competitive bidding, commissioners court in its discretion may utilize such procedure if it determines "good business management" requires it). The county may dispose of the property by conventional private sale.¹ Finally, in deciding on a procedure for selling the land, the commissioners court may want to consider borrowing or adapting provisions from statutes setting out procedures for sales of this type. See Local Gov't Code § 272.001(b), (c) (in certain sales to abutting property owners, property may be sold "in proportion to their abutting ownership, and the division between owners must be made in an equitable manner").

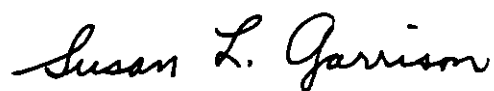
S U M M A R Y

Under the facts presented, Harris County's sale of a tract of land acquired but never used for a road purposes is governed by section 31-E(1) of the Harris County Road Law. Such sale is not subject to sections 263.001 and 263.002 of the Local Government Code, which require the commissioners court to sell real property at a public auction with notice to the public, subject to certain exceptions. Nor is the sale subject to section 263.007 of the Local Government Code, authorizing counties to sell and lease property by a sealed bid procedure, or to 272.001 of the Local Government Code, authorizing political subdivisions to sell land by a sealed bid procedure. The terms "abutting or adjoining landowners" in section 31-E(1) of the Harris County Road Law mean landowners whose property touches the unneeded right-of-way that the county wishes

¹We caution that additional considerations may arise in particular cases with respect to the county's sale of land. We do not understand the situation you present here to raise issues, for example, as to whether the county has "dedicated" the tract in question to public use. See, e.g., *City of Tyler v. Smith Co.*, 246 S.W.2d 601 (Tex. 1952) (county could not convert to private use a square which had been dedicated to public).

to sell. The commissioners court has discretion to adopt a reasonable procedure to sell the unneeded right-of-way to "abutting or adjoining" landowners pursuant to section 31-E(1) of the Harris County Road Law.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee